Filed 5/22/19 In re S.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.S. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.W., Defendant and Appellant.	E071718 (Super.Ct.Nos. J265406, J265407 & J265588) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, and Pamela J. Walls, Special Counsel, for Plaintiff and Respondent.

On November 27, 2018, the juvenile court terminated defendant and appellant, J.W.'s (Father), parental rights as to L.W. (born in November 2006), J.W. (born in December 2013), and S.S. (born in May 2016) (collectively Minors). On appeal, Father contends his counsel below provided constitutionally ineffective assistance of counsel by failing to call witnesses at the hearing on June 18, 2018, at which the court set the Welfare and Institutions Code section 366.26[1] hearing and by failing to file petitions for extraordinary writs challenging the court's orders. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In May 2016, a social worker responded to an immediate response referral alleging that N.S. (Mother)[2] had given birth to S.S.[3] and tested positive for methamphetamine, marijuana, and alcohol. Mother tested seven times the legal limit for alcohol. Mother admitted to using methamphetamine, marijuana, and alcohol throughout her pregnancy with S.S. Mother used methamphetamine every couple of days, last using it three days before giving birth to S.S. She admitted using marijuana weekly, last using it three days before S.S.'s birth. Mother would drink a quarter gallon of vodka daily. She last drank a couple of shots on the day of S.S.'s birth.

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Mother is not a party to the appeal.

[3] S.S.'s name was listed as R.S. in the initial reports, but was later changed to S.S. No reason for the change appears in the record.

A review of plaintiff and respondent, San Bernardino Children and Family Service's (CFS), records reflected that Mother's child, J.W., was born having tested positive for opiates and amphetamines. J.W. was in the neonatal intensive care unit for three months after his birth.

Mother reported that Father used marijuana occasionally. J.W. lived with Father. Father said Mother had last visited J.W. a week earlier; Father reported that he limited Mother's visitation due to her substance use and he denied her access to his home. He said he did not allow J.W. to go to Mother's house. However, he later admitted he did allow J.W. to go to Mother's home.

Father said he did not use drugs, but admitted he would test positive for marijuana and alcohol if tested that day. During the social worker's visit to Father's home, Father initially denied the social worker access to one of the rooms; when he eventually allowed the social worker access to the room, the social worker found Mother sleeping therein.

Mother's criminal history included five incidents of possession of controlled substances and five incidents of driving under the influence. Father's criminal history included a rape allegation.[4] CFS history reflected that previous voluntary family maintenance services were closed when Mother failed to complete services as to J.W. J.W. was placed in Father's custody due to Mother's substance abuse. CFS filed juvenile dependency petitions on behalf of J.W. and S.S. On May 13, 2016, the court detained J.W. and S.S. and ordered both Father and Mother to drug and alcohol test that day.

[4] The record never indicates whether the criminal histories reflect arrests, charges, and/or convictions.

On May 17, 2016, the social worker received a call from T.B., the mother of L.W.,[5] one of Father's other children. T.B. reported that Father drank three, 40-ounce beers after the last court hearing. T.B. believed that Mother was still living with Father. T.B. reported that on May 16, 2016, Father woke her up by jumping on her and hitting her. During the incident, Father twisted L.W.'s arm. Father's mother reported that Father, Mother, and T.B. were arguing and physically pulling on L.W., as well as pushing and pulling on each other. T.B. called the police. A sheriff's deputy confirmed that there was a domestic violence call.

T.B. was concerned because L.W. had severe autism and Father did not have him enrolled in services. Father reported that L.W. was in services until three weeks earlier; Father was not able to continue services because he was not always able to be home during the service visits due to their frequency.

CFS filed a juvenile dependency petition on behalf of L.W. On May 25, 2016, the court detained L.W. The court ordered Father and Mother to drug test that day.

In a first amended detention report dated June 2, 2016, the social worker reported that she had confirmed S.S. tested positive for amphetamines at birth. Father failed to show for two on-demand drug tests.

In the jurisdiction and disposition report as to S.S. and J.W. filed on June 2, 2016, the social worker noted that Father reported having an expired medical marijuana card for anxiety, which was diagnosed when he was in the army. Father had been diagnosed with

[5] T.B. is not a party to the appeal.

post-traumatic stress disorder (PTSD), but had discontinued taking the prescribed medication. On May 25, 2016, Father tested positive for marijuana. Father reported a history of domestic violence with T.B. and C.,[6] the mother of another one of Father's children, S.W., whom Father had not seen since 2013.

Mother reported using methamphetamine off and on since she was 17 years old, which she used frequently in the last year; using marijuana sporadically since she was 14 years old; drinking one-half to a pint of vodka every day; and abusing prescription drugs, including Norco. Mother described herself as a "'functioning alcoholic,'" but believed she had substance abuse problems. She admitted using drugs and alcohol during her pregnancy with J.W. Mother tested positive for amphetamines on May 25, 2016.

S.S. had been diagnosed with respiratory distress, possible sepsis, and fetal alcohol syndrome. Parents were given once weekly visitation with Minors for two hours.

The social worker filed a jurisdiction and disposition report as to L.W. on June 10, 2016. Father reported he and T.B. had engaged in domestic violence 10 years earlier, which resulted in his spending 10 days in jail. Father provided a letter from L.W.'s service provider reflecting that services had been terminated due to excessive cancellations.

T.B. reported a domestic violence incident in which Father had dragged her out of bed when she was asleep when she was four months pregnant with L.W.; she contacted law enforcement, who arrested Father; Father went to jail. She reported that L.W. was

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[6] The report does not list C.'s last name. C. is not a party to the appeal.

diagnosed with autism at 10 months of age and was supposed to receive physical therapy, speech therapy, and sign language instruction. T.B. tested positive for benzodiazepines and opiates on May 25, 2016. T.B. had a prior dependency history with respect to her son L.B., who was removed due to drug trafficking and domestic violence. Her reunification services as to L.B. were terminated when she did not complete services.

CFS personnel filed separate, amended juvenile dependency petitions as to all three Minors. As to S.S., the petition alleged substance abuse by Mother (b-1), domestic violence by Mother (b-2), use of drugs by Father (b-3), a history of domestic violence by Father (b-4), and that Father had an untreated mental health diagnosis (b-5). As to J.W., the petition alleged substance abuse by Mother (b-1), domestic violence as to Mother (b-2), use of drugs by Father (b-3), a history of domestic violence by Father (b-4), that Father had an untreated mental health diagnosis (b-5), that Father allowed Mother to have access to J.W. despite knowing that Minor tested positive for drugs at birth and that Mother used drugs (b-6), and that Father did not obtain services for J.W. despite knowing he suffered from developmental delays (b-7). As to L.W., the petition alleged substance abuse by T.B. (b-1), domestic violence as to T.B. (b-2), that T.B. had a history of mental health issues (b-3), that Father allowed Mother to have access to L.W. (b-4), use of drugs and alcohol by Father (b-5), a history of domestic violence by Father (b-6), that Father had an untreated mental health diagnosis (b-7), that Father did not maintain appropriate services for L.W. (b-8), and that T.B. failed to reunify with L.B. (j-9).

In an information for the court filed on July 5, 2016, the social worker reported Father tested positive for marijuana on June 15, 2016, and failed to show for tests scheduled on May 10, 13, and 31, and June 28, 2016. Mother failed to show for tests on May 10 and 13, and June 20 and 22, 2016. Father's son S.W was in the care of C. pursuant to dependency proceedings in Washington State where Father was determined to have engaged in general neglect by leaving S.W. in a hotel alone when he was three months old. Pursuant to mediation, Father agreed to submit on the allegations as amended and to reunification services to include a domestic violence program, general counseling, a psychological evaluation to determine any medications he should be on, parenting education, a substance abuse program, and drug testing.

At the July 6, 2016, jurisdiction and disposition hearing as to S.S. and J.W., the court dismissed the b-2 allegations in the petitions, found the remaining allegations in the petitions true, removed S.S. and J.W. from the parents' custody, and granted reunification services to both Father and Mother. At the jurisdiction and disposition hearing on August 1, 2016, as to L.W., the court found all allegations true, removed L.W. from Father and T.B.'s custody, granted Father reunification services, and denied reunification services to T.B. pursuant to section 361, subdivision (b)(10).

In a status review report filed on December 29, 2016, as to S.S. and J.W., the social worker noted Father had attended 12 out of 12 counseling sessions; the therapist reported that Father made some progress, but was resistant to some aspects of his case plan. Father refused to discuss anything to do with the trauma he endured in the military

despite his diagnosis of PTSD. He did not feel he had a problem with drugs or alcohol. Father tested positive for marijuana on July 6 and 20, 2016. He tested positive for alcohol on September 20, November 29, and December 8, 2016. Father failed to show for testing scheduled on September 24 and November 4, 9, and 26, 2016. He failed to schedule a psychiatric evaluation and was resistant to doing so because he did not want to take medication.

Father completed a 12-week domestic violence program. He had enrolled in an outpatient substance abuse program. Father was 20 minutes late to a visit on August 8, 2016; he failed to show for visits scheduled for August 30, September 12, and October 24, 2016. When Father visited, he was affectionate with Minors and provided positive parenting.

In the status review report filed the same day as to L.W., the social worker noted Father had missed three visits. Despite having asked for more visitation, Father typically ended visits 30 to 60 minutes early. The social worker confirmed that L.W. had been diagnosed with autism and was severely developmentally delayed. L.W. wore diapers and smeared feces if not closely watched.

At the six-month review hearings on January 6, 2017, the court ordered Father to drug and alcohol test that day. The court continued Father's reunification services.

In nonappearance reviews on May 11 and 12, 2017, it was noted Father had undergone a psychiatric medication evaluation on February 2, 2017; he had been diagnosed with anxiety disorder and alcohol abuse in remission. Father failed to show

for drug tests on December 27, 2016, February 6, and March 1, 2017. He tested negative on December 20, 2016, January 6, 25, 30, February 21, March 23, and April 20 and 26, 2017. Father requested unsupervised visits with Minors. It was noted Father had regular visitation with S.S. and J.W., but visited sporadically with L.W., sometimes ending his two-hour visits with L.W. 30 to 90 minutes early.

In the status and review reports filed on June 13, 2017, the social worker noted Father had completed eight sessions with a new therapist during which he addressed his past military experience and PTSD diagnosis. The therapist recommended ending therapy as Father had accomplished all his goals. Father had consistently visited with Minors, although he continued to end visits early with L.W. Father reported having difficulty getting to visits with L.W. despite CFS's provision of monthly gas cards.

At the hearing on July 25, 2017, the parties agreed to continue Father's reunification services as to all three Minors, with an amended case plan as to L.W. The court terminated Mother's reunification services.

In a nonappearance review dated September 5, 2017, it was noted Father had been authorized to have unsupervised visits with Minors at CFS's offices. Father was 20 minutes late to a visit on August 1, 2017. L.W. escaped from Father twice at the visit and Father threw L.W. over his shoulder and carried him back. At a child and family team meeting (CFTM) which included several of Father's relatives, concern was voiced by several participants that Father was not prepared to care for three children with special needs and delays at the same time.

In a nonappearance review dated September 14, 2017, a psychological evaluation of Father was attached. The psychologist opined that despite Father's diagnoses and pattern of concealing information, he was capable of effectively parenting Minors. Nonetheless, the psychologist's opinion was prefaced with the warning that it was based largely upon Father's self-reporting in which individuals are "often motivated to conceal negative information or present themselves in an overly favorable light." The social worker expressed concern that Father had not been candid with the psychologist about several issues.

In status review reports filed on November 8, 2017, the social worker recommended Father's reunification services be terminated. The social worker expressed the following concerns: "The prognosis for [Father] to reunify with his children remains guarded. While [Father] has completed the Case Plan requirements ordered by the Court, . . . [CFS] remains concerned that caring for all three of his children at once may be overwhelming for a single caregiver, thus placing the children at further risk of harm or neglect. All three of the children have been evaluated by their service professionals to have severe developmental delays such as, Autism Spectrum Disorder, Fetal Alcohol Syndrome, and Spina Bifida and require round the clock, close supervision . . . ." Although Father had completed outpatient drug treatment services, he was referred by his provider to aftercare services which he stated he does not need. Father tested negative for substances on August 7 and 21, September 8 and 27, and October 16, 2017. S.S. and

J.W. were considered severely developmentally delayed and are performing developmentally at approximately half of their chronological age.

At the hearing on November 17, 2017, the court noted: "The recommendation is to terminate reunification services, but continue services to him under the minors' permanent plan with the goal of return to the father . . . ." Father's attorney responded: "Yes. On behalf of my client, we are submitting to that." The court then terminated Father's reunification services, but ordered visitation to be unsupervised with the social worker authorized to liberalize visitation as to frequency and duration, including authority for Father to have weekend and overnight visitation.

In the status review reports filed on May 4, 2018, the social worker recommended that the court terminate Father's family unification services and set the section 366.26 hearing. The social worker had made attempts to arrange a CFTM with Father and his relatives; however, Father reported that he was unable to coordinate his family members and did not feel "'it would really matter at this point.'" The social worker observed that Father was not prepared for long unsupervised visits: he would not bring appropriate food and drink for Minors; not change L.W.'s diaper when it was very wet; not clean L.W. thoroughly after he had bowel movements; not hold L.W. carefully enough at drop off, to the point that L.W. was hit by a car in March 2017; did not want the full four hours of his unsupervised time with L.W.; had canceled a visit due to bad weather; and did not know what to do with L.W. other than sit in the car for four hours. The social worker

reported that all three Minors were nonverbal. Father had 11 negative drug tests since the last hearing.

On May 24, 2018, Father filed section 388 petitions requesting custody of Minors. Father alleged he had a support system in place and had completed his case plan. The court summarily denied the petitions on May 25, 2018.

On June 18, 2018, the social worker filed an addendum report noting that another CFTM had been held: "It was agreed by all parties that [Father] loves his children greatly and does his best to parent them, keep them safe, instill good morals and values, that he keeps in contact with his therapist by phone call about two times monthly to keep her updated on the case, that he is going back to school to further his education, that he has contacted referrals his therapist has provided to him, that he maintains overall consistent visitation, and that he has tested clean for all random tests during the reporting period." Nonetheless, "[c]oncerns or risks for safety included the high likelihood that [L.W.] or the younger girls may run away from [Father] and could be seriously injured, that [Father] will need to rely heavily on respite care or it may not be available when he needs it, and that [Father] will not be able to safely care for all three children at once by himself until adulthood, and the children will not have the required amount of supervision and thus could be seriously injured." The social worker noted that S.S. incurred a bruise during visitation with Father which he did not report. L.W. had bitten J.W. while sitting in the car waiting for Father to arrive.

On June 22, 2018, Father testified at the contested permanency planning hearing. He testified he was aware of Minors' special needs, had family support in place, and had completed his case plan. Minors' counsel joined in the recommendation to schedule the section 366.26 hearing. The court observed: "The issue was never completion of services, cooperativeness, dedication to the children, any risk of any intentional harm. The real issue is whether the father can parent these children. Given that there are three children, all three with special needs. [L.W.] has significant special needs." The court shared CFS counsel's concern that Father could not parent all three special needs children. The court then scheduled the section 366.26 hearing.

On June 25, 2018, Father filed notices of intent to file petitions for extraordinary writ. On August 8, 2018, we dismissed the case for failure to timely file the writ petitions. On September 5, 2018, we dismissed duplicative notices to file extraordinary writs as untimely.

On August 27, 2018, Father filed a second set of section 388 petitions requesting a new social worker and new attorney in order to obtain a "new order." Father requested immediate return of Minors, more visitation, or placement of Minors with the paternal aunt. Father alleged it was always better for a child to be raised by a biological parent. The juvenile court summarily denied Father's petitions.

On October 15, 2018, the social worker filed the section 366.26 report. The social worker noted that S.W. and J.W. had been removed on May 10, 2016, and placed with the prospective adoptive parents on September 8, 2017. L.W. had been placed with the

prospective adoptive parents upon initial removal on May 20, 2016. The prospective adoptive parents and Minors had formed a parent-child relationship. The prospective adoptive parents loved the children and wished to legalize the parental relationship through adoption. Minors appeared attached to the prospective adoptive parents. They sought out the prospective adoptive parents for comfort, attention, and to have their needs met.

Father visited Minors consistently, missing only two visits. The visits went well; Father interacted with Minors. During one visit while Mother was on crutches, Father refused to change S.S.'s diaper. Father had limited interaction with L.W.

At the hearing on October 22, 2018, Father was represented by a new attorney who requested visitation logs from CFS, which the court ordered CFS to produce. The court continued the section 366.26 hearing.

On November 5, 2018, the court received the visitation logs spanning between April 1 and November 1, 2018. On November 27, 2018, the court held the section 366.26 hearing. Father's new counsel argued the court should apply the beneficial parental relationship exception to termination of parental rights. The court found Minors adoptable, found the beneficial parental relationship exception inapplicable, and terminated Father's parental rights.

II. DISCUSSION

Father contends his counsel at the hearing at which the court set the section 366.26 hearing rendered constitutionally ineffective assistance of counsel by failing to call

witnesses other than Father and by failing to file the petitions for extraordinary writ. We hold that we lack jurisdiction to address the issues, that Father has forfeited the issue, and that Father has failed to make a sufficient showing of ineffective assistance of counsel.

A. *Jurisdiction and Forfeiture*

"One of the most fundamental rules of appellate review is that the time for filing a notice of appeal is jurisdictional. '[O]nce the deadline expires, the appellate court has no power to entertain the appeal.' [Citation.]" (*In re A.O.* (2015) 242 Cal.App.4th 145, 148.) A notice of appeal from an appealable juvenile court order must be filed within 60 days of the rendition of judgment. (Cal. Rules of Court, rule 8.406(a)(1).)[7] "'Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to [section 366.26.]' [Citation.]" (*In re Hannah D.* (2017) 9 Cal.App.5th 662, 678; accord, *In re A.A.* (2016) 243 Cal.App.4th 1220, 1239.) "'"A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order." [Citation.]' [Citations.]" (*In re S.B.* (2009) 46 Cal.4th 529, 532; accord, *In re Z.S.* (2015) 235 Cal.App.4th 754, 769.) "This '. . . rule' holds 'that an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order,' even when

[7] All references to rules are to the California Rules of Court.

the issues raised involve important constitutional and statutory rights. [Citation.]" (*In re Z.S.*, *supra*, at pp. 769-770.)

"[R]esort to claims of ineffective assistance as an avenue down which to parade ordinary claims of reversible error is also not enough and that it is never enough, alone, to argue that counsel rendered ineffective assistance by not raising potentially reversible error on" a previously appealable order. (*In re Janee J*. (1999) 74 Cal.App.4th 198, 209.) "[L]ate consideration of ineffective assistance claims defeats a carefully balanced legislative scheme by allowing a back-door review of matters which must be brought for appellate review . . . by earlier appeals, that is, before the point is reached where reunification efforts have ceased and the child's need for permanence and stability become paramount to the parent's interest in the child's care, custody and companionship [citation]." (*Id.* at p. 208.) "[T]o fall outside the waiver rule, defects must go beyond mere errors that might have been held reversible had they been properly and timely reviewed. To allow an exception for mere 'reversible error' of that sort would abrogate the review scheme [citations] and turn the question of waiver into a review on the merits." (*Id.* at p. 209.) Failure to raise ineffective assistance of counsel below forfeits the issue on appeal. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715-716.)

Here, Father raises issues on appeal which challenge the finality of the order setting the section 366.26. Such challenges are only reviewable by petition for extraordinary writ. Thus, we lack jurisdiction to consider the issues raised by Father in this appeal.

Father cites rule 8.450(c) for the proposition that trial counsel is required to file the petition for extraordinary writ. Contrary to counsel's assertion, however, rule 8.450(c) provides that "petitioner's trial counsel, *or in the absence of trial counsel, the party*, is responsible for filing any notice of intent and writ petition . . . ." (Italics added.) Thus, because Father could have, but did not, file the petitions for extraordinary writ, we are without jurisdiction to address any challenge to the order setting the section 366.26 hearing.

Moreover, we note that Father filed four notices of intent to file the petitions for extraordinary writs. Likewise, Father filed four section 388 petitions. Thus, Father demonstrated that he was fully capable of filing the petitions for extraordinary writ. Finally, Father was represented by different counsel at the section 366.26 hearing; thus, Father could have raised the issue of his prior counsel's purported ineffective assistance of counsel at either of the two hearings at which he was represented by new counsel. The failure to do so also forfeits the arguments on appeal.

B. *Ineffective Assistance of Counsel*

Even assuming that we could address the issues he raises on appeal, we hold that Father has failed to make a sufficient showing of ineffective assistance of counsel.

"We address a claim of ineffective assistance of counsel in the dependency context by applying a two-part test. In the first step, we examine whether trial counsel acted in a manner expected of a reasonably competent attorney acting as a diligent advocate. If the answer is no, we move to the second step in which we examine whether, had counsel

rendered competent service, the outcome of the proceeding would have been more favorable to the client. [Citation.]" (*In re Ana C.* (2012) 204 Cal.App.4th 1317, 1329-1230.)

"""'Prejudice is shown when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome."'" [Citation.] [¶] Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." [Citation.]'" (*People v. Vines* (2011) 51 Cal.4th 830, 875-876.) "'In some cases . . . the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged. In such circumstances, unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation, these cases are affirmed on appeal. [Citation.]' [Citation.]" (*In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1716; accord, *In re Merrick V.* (2004) 122 Cal.App.4th 235, 255.)

"'We cannot assume that [a] decision was the result of negligence, when it could well have been based upon some practical or tactical decision governed by client guidance.' [Citation.]" (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 255.) "'[C]ounsel is not required to make futile motions or to indulge in idle acts to appear competent.' [Citation.]" (*Ibid.*) Where "the record lacks any evidence concerning what

testimony [the witnesses] might have offered or what reasons trial counsel may have had for not seeking such testimony, we are not in a position to determine the sagacity of trial counsel's decision in this regard." (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293-294.)

Here, Father contends counsel's failure to call additional witnesses at the hearing at which the court set the section 366.26 hearing constituted prejudicial ineffective assistance of counsel. However, Father fails to identify which witnesses counsel should have called and to what they would have testified. Moreover, Father fails to specify how the calling of additional witnesses would have resulted in a more favorable outcome. Thus, Father has failed to show defective representation and a reasonable probability of a different outcome such to prevail upon an ineffective assistance of counsel claim. (*In re Emilye A., supra,* 9 Cal.App.4th at p. 1711.)

Father also maintains counsel's failure to file the petitions for extraordinary writ constituted prejudicial ineffective assistance of counsel. However, again, Father fails to identify any specific issues counsel could have raised in the petitions and how the filing of the petitions would have resulted in a more favorable outcome. (See *In re Emilye A., supra,* 9 Cal.App.4th at p. 1711 [parent must show both defective representation and reasonable probability of a different outcome to prevail on ineffective assistance claim].) Because the record is silent as to why counsel both declined to call additional witnesses and file the petitions for extraordinary writ, we must assume that these decisions were based on tactical concerns. Here, counsel could have determined that calling additional

witnesses would have been more damaging to Father's case. (*In re Angelia P.* (1981) 28 Cal.3d 908, 926-927.) Similarly, counsel could have determined that filing the petitions for extraordinary writ would have been frivolous. (*In re Merrick V.*, *supra*, 122 Cal.App.4th at p. 255 ["'[C]ounsel is not required to make futile motions or to indulge in idle acts to appear competent.'"].) Thus, to the extent we may even address Father's claims of ineffective assistance of counsel, Father has failed to establish prejudicial ineffective assistance of counsel.

III. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.